

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring two mining claims null and void ab initio in part because the lands included in the claim were not subject to location. NMC 682726, NMC 682727.

Affirmed.

1. Mining Claims: Lands Subject to

Section 2 of the Nevada Wilderness Protection Act of 1989 designated certain National Forest System lands in the State of Nevada as components of the National Wilderness Preservation System. Section 4(d)(3) of the Wilderness Act of 1964 provides that effective Jan. 1, 1984, the minerals in lands designated as wilderness areas are withdrawn from all forms of appropriation under the mining laws. That portion of a mining claim that was located on lands so designated and withdrawn from mineral entry on the date of location is null and void ab initio.

APPEARANCES: Richard K. Hatch, Garrison, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Richard Hatch has appealed from a July 18, 1997, Decision of the Nevada State Office, Bureau of Land Management (BLM), declaring placer mining claims Hatch Rock 66 and Hatch Rock 67 (NMC 682726 and NMC 682727) null and void ab initio in part. 1/ BLM determined that the claims were partially located in the Mt. Moriah Wilderness Area, a designated wilderness area, and that the land thus was not open to mining location.

Notices of location in the case file show that Hatch Rock 66 (NMC 682726) and Hatch Rock 67 (NMC 682727) were located on July 22,

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1/ This appeal originally was docketed as part of IBLA 97-551, another appeal by Richard K. Hatch. It was later redocketed and assigned docket number IBLA 98-251.

1993, by Richard K. Hatch and Jennie B. Hatch. Hatch Rock 66 is situated in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of sec. 33, T. 16 N., R. 70 E., Mount Diablo Meridian, Nevada, and Hatch Rock 67 is in the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of the same section. In declaring the claims null and void ab initio in part, BLM stated that part of the land embraced by the claims was included in an area that was designated as wilderness by Pub. L. No. 101-195, 103 Stat. 1784, approved December 5, 1989, which was thus withdrawn from all forms of appropriation under the mining laws as of that date. <sup>2/</sup>

In his Statement of Reasons (SOR), Hatch does not argue that BLM erred when it concluded that parts of the Hatch Rock 66 and Hatch Rock 67 mining claims were located on land within the Mt. Moriah Wilderness Area. Instead, Hatch asserts that the claims were improperly included in the wilderness area because the wilderness boundaries were "misplaced" and because "[early] wilderness studies contained serious errors concerning [his] claims." (SOR at 1, 2.) He contends that the wilderness should have circumvented the claims because they contain "the most valuable deposit of natural dimension stone in the United States." (SOR at 1.) He also argues that the claims were active for years <sup>3/</sup> and that there is a "much better than average" market for the stone. (SOR at 1.)

[1] Section 2 of the Nevada Wilderness Protection Act of 1989 designated certain lands in Nevada as wilderness and components of the National Wilderness Preservation System. Among such lands were certain lands in the Humboldt National Forest that were to be known as the Mt. Moriah Wilderness Area. Pub. L. No. 101-195, § 2(13), 103 Stat. 1785 (Dec. 5, 1989). An area designated wilderness by Congress becomes a component of the National Wilderness Preservation System and, as such, is managed in accordance with the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (1994). Section 4(d)(3) of the Wilderness Act of 1964 provides, in pertinent part: "Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto." 16 U.S.C. § 1133(d)(3) (1994). We note that Hatch does not assert, and the record does not show, that Hatch has any such valid existing right, since when the lands at issue were designated part of the Mt. Moriah Wilderness Area, they no longer were subject to location under the mining laws.

<sup>2/</sup> The BLM Decision identified the following lands embraced by the Hatch Rock 66 and Hatch Rock 67 as being located in sec. 33, T. 16 N., R. 70 E., in the Mt. Moriah Wilderness Area and thus not open to mineral entry: W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; W $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; and W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The lands outside the wilderness are described as: E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  (Hatch Rock 66) and E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  (Hatch Rock 67).

<sup>3/</sup> These claims are apparently relocations of earlier claims held by Appellant and denominated as the Grandpa 66 and 67 claims.

It is well established that mining claims that are located on Federal lands that are withdrawn from mineral entry on the date of location are null and void ab initio. Jack Stanley, 103 IBLA 392 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991); Coeur Explorations, Inc., 100 IBLA 293 (1987); John C. Neill, 80 IBLA 39 (1984); Philip A. Cramer, 74 IBLA 1 (1983); Grace P. Crocker, 73 IBLA 78 (1983); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). As the record shows that parts of the Hatch Rock 66 and 67 mining claims were located within the Mt. Moriah Wilderness Area at a time when the land was withdrawn from mineral entry by an act of Congress, BLM properly declared the claims partially null and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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T. Britt Price  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge